

APPROVED: 7/20/15

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
SPECIAL MEETING - JUNE 29, 2015**

A Special meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Monday, June 29, 2015, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Tim Doherty, Chairman
Ray Devereaux
Tim Donnery
Tony Galu

Absent

Jack Jannarone, Deputy Chairman

Alyse Terhune, Attorney, (Lewis & McKenna)

ALSO PRESENT: John Hager, Building Inspector, Jack Gafford, Development Director, Old Guard Hotel, David Getz, and Frank Phillips.

A moment of silence was held in memory of Terry Holt.

MR. DOHERTY: Today is Monday, June 29. I will open this Special Meeting that we are having of the Zoning Board of Appeals. We have two applicants on the agenda for this evening. One is the Old Guard Hotel, Church Hill Properties, and the other Karen McCormick of 37, 39 South Street, Highland Falls. Jack, with your permission, I will take Mrs. McCormick's application first.

MR. GAFFORD: Sure.

MR. PHILLIPS: Thank you, I appreciate that. My name is Frank Phillips, of the Law Offices of Phillips & Milman, 148 South Liberty Drive in Stony Point, NY, and I represent the Applicant, Karen McCormick. We had already been before the Planning Board initially because there was an issue that came up in the course of my client looking to sell one of the properties that, in fact, deeds were filed in the Orange County Clerk's Office with a transfer. She is looking to sell 37 South Street which, if you are facing the property, is the property to the left. To the right is 39 South Street which she is still going to remain the owner of.

What happened was, I believe, with her previous counsel there was a deed that was filed in the Orange County Clerk's Office transferring the property without any type of lot line change or approvals. So of course, when I was retained for her

to sell the property, the issue came up. I basically said you have to go through the Boards here, that is my understanding. I confirmed same with your Counsel and the Building Inspector. I did appear before the Planning Board with the sketch because the plan was initially to add on the deck to 39 South Street. It failed to show that they would have to increase the lot size for 37 South Street by giving some of the back yard. In this period of time from May 28 when I appeared before the Planning Board and today, I was able to get the survey and work with the previous Counsel to make those changes and try to minimize the amount of variances that are necessary.

As a matter of background, I will touch on the old stone house. It is the one that we are looking to salvage on the left. It was built in the early 1900's. My client purchased that with her husband in 1966. The property next door she purchased in 1972, which was built in 1969. In 1990, her husband passed away and subsequently in 1992, she did go through the Building Inspector, which she believes was Hank Woodruff at the time, to have him inspect the multi-level wooden deck that was put onto 39 South Street. At the time it was not really an eventful thing because she owned both pieces of property. Now this deck was actually on 37 South Street property but attached to 39 South Street.

We appeared before the Planning Board on May 28 and indicated what we wanted to do. This matter was referred to the Zoning Board of Appeals. I apologize for my horrible handwriting on the application because usually I submit everything typewritten, but time was kind of tight when I found out about this special meeting to be able to get it on the agenda. I did fill out the application; my client came in to sign it. I do owe \$250. I have the check in my desk in Stony Point and will get it to you tomorrow. I did pay the \$750 Escrow Fee.

I filled out the short EAF form. I did have some E-mail correspondence with your Counsel and the Building Inspector as to the variances that are required here. We feel that we can meet the test, based upon the history of the property, of undue hardship with the deck attached. It would be undue hardship to rip down the deck. It is an interesting piece of property with the slopes and everything. And, of course, practical difficulty based upon the property itself it is self-explanatory. I don't think it is something that was self-created because at the time she was looking to go through the proper process. Without the variance there would be undo hardship.

What we are looking to do is to obtain the variances for both properties. The stone building, which is the property to the left, is 37 South Street, a multi-family that she is currently renting out as a two-family dwelling. That had some impact on the lot area that would be required of 6,000 square feet. It would normally be 3,000 if she was using it as a single family. I believe it is in the R-4 Zone. I have put it in the application on page 2 and 3. I tried to break it out as easily as I could. This should be consistent with the E-mails with your Counsel and the Building Inspector.

MR. DOHERTY: There is one thing I want to point out it may be semantics, but it is a legal document. Board Member Tim Donnery pointed out that the property is actually on the west side of South Street not the east side as listed.

MR. PHILLIPS: That is my mistake. The river is on that side.

MR. DOHERTY: We just want to be sure everything is in order.

MS. TERHUNE: You said the owner came in to sign the document?

MR. PHILLIPS: She signed the original. I sent in 15 copies. I made sure she came in that day before a Notary.

MS. TERHUNE: I don't have that.

MR. DOHERTY: You don't have the Notary signature?

MS. TERHUNE: I don't. I will get a copy. Mr. Doherty gave her his copy.

MR. PHILLIPS: She came in from Florida.

MR. HAGER: She is not good at signing, so we had her sign one.

MR. PHILLIPS: Yes, that is right; she has an issue, and can't sign a lot of documents. She actually has a stamp.

MS. TERHUNE: I just had a couple comments. If you look at the first page, 37 South Street, the way I read it the total for both side yard setbacks is 20. Actually, 20 is the total, you have 4.9. So you would need a variance there.

MR. PHILLIPS: I thought it didn't because it is a corner lot.

MS. TERHUNE: Even though it is a corner lot. If you want, you and I can E-mail about that. The only other comment is the lot on 39 South Street is 5,000.

MR. PHILLIPS: I got it. We still have enough, right? That is my mistake.

MS. TERHUNE: Yes, no problem. The total for both sides would apply. There are just some minor changes in the request for variances. The total for both sides is 5.8. You can give me a call tomorrow.

MR. DOHERTY: An updated application?

MR. PHILLIPS: Did the surveyor submit to the Board a larger version of that little diagram?

MR. HAGER: Not that I know of. He sent me correspondence.

MR. PHILLIPS: I will follow up with him. I was using a magnifying glass. I will get that for the Board.

MR. DOHERTY: Any other comments from Board Members?

MS. TERHUNE: It is a Type II Action. It does not have to be referred to the County; it is not within 500 feet of any of the places on the List. You can probably set a Public Hearing for the next meeting, if you are so inclined.

MR. DONNERY: I do believe they are within 500 feet of the military.

MS. TERHUNE: We have not been referring them because the military federal grounds are not one of the listed criteria for a referral. So we haven't generally been referring those. They will get a notice of the Public Hearing.

A motion was made to set a Public Hearing for Monday, July 20, 2015, at 7:00 P. M., for this project.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved

MR. DOHERTY: You will get John a bigger copy and Alyse and you will update the application.

MR. PHILLIPS: Yes.

MS. TERHUNE: There are notice requirements in the Code.

MR. PHILLIPS: Thanks.

MR. DOHERTY: I would like to make one amendment; I did not do a Roll Call previously. All members are present, with the exception of Jack Jannarone. Thank you.

MR. DOHERTY: Next up is the Old Guard Hotel, Church Hill Properties. Gentlemen, how are you this evening? Please come up and run through your proposal one more time.

MR. GAFFORD: In front of you are the large maps, single page layout of the revised structure which is, as we explained before, shorter in width, as you look at it below the hill, thicker or deeper. It gets deeper into the setback. That is the only variance that we can see that really requires an increase. The rest of the building for instance cuts off a floor so the height variance that we are looking for drops from 13 to 3. A lot of the variances related to the long retaining walls that have been slightly modified actually get a little bit better as opposed to worse.

We were able to drop the height of the wall in some cases, especially on the southeast side.

MR. DOHERTY: The lower retaining wall?

MR. GAFFORD: Yes, both of them actually. The old ones went further out into the zone and cut back and down this line.

MR. DOHERTY: Made a sweeping turn.

MR. GAFFORD: Right. We were able to get further away from this declining hill. So that creates the variances we are asking for. On this plan there are 3 or 4 measurements of retaining walls for “A”, “B”, and “C”. “A” being the far left wall, “B” being the longest that sweeps the whole project, and “C” is the backup wall. Instead of putting it on the form because there were 3 or 4 sections of that, we put it on the sheet itself down at the bottom.

MS. TERHUNE: Did you figure the height and variance required in the same way you did the other time?

MR. GAFFORD: We certainly did.

MR. GETZ: Yes, but the one change is that on the uphill side where the wall is much less high, we assumed the 1 foot reveal. That might explain if you have a question on the map.

MS. TERHUNE: I think the various points, the maximum height, and then that one foot.....

MR. GAFFORD: Is assumed on the other side to add to it. The average height the way it would be computed would be a little bit higher than just taking the height and cutting it in two. It would be the height, plus one and cutting it in two.

MR. GETZ: Yes, for example for wall “A” we have a 13 foot maximum height, we add 1 and get 14, and divide by 2, the average would be 7.

MR. GAFFORD: We felt that filling the ground level right to the top of the wall probably would not be practical. So we assumed we would be a foot below on the inside of the wall.

MS. TERHUNE: John, do you have any questions, because we had talked about that.

MR. HAGER: That seems to jive. I can see how the average is figured with maximum heights and you have a foot on the side. I don't have the detail on that particular section of the wall.

MR. GETZ: We can provide that.

MS. TERHUNE: That would be good.

MR. GAFFORD: One question we had, there seems to be confusion in the write up, not your confusion, but ours, in your previous write up on the resolution. We talk about a transitional yard variance and we talk about a rear setback variance. I had a long discussion with John about this; they seem to be the same.

MS. TERHUNE: I don't think they are. The setback is measured from the boundary line and so is the transitional. But they are two different values.

MR. GAFFORD: For instance, if you think about this lot on Route 9W being the front, if we go down the hill to the residential side of it, is that the back of the lot or front on Mearns?

MR. GETZ: The zone line is this heavy dash.

MS. TERHUNE: You need a transition from the zone and also the lot line I think where it is bifurcated is also the lot line setback, as I recall.

MR. GAFFORD: They are the same, aren't they?

MR. GETZ: And remember, I don't know if this matters or not, but during the process of prior plan approval, the lots were merged. This previously was a lot boundary also but now it is just an interior.

MR. GAFFORD: It is one lot. Before different lots were combined by the County into one. It is just a clarification if the two variances are one or two.

MR. DONNERY: If it is one lot, then the only thing you are discussion now is coming in on the other zone.

MR. GAFFORD: The transition across the zoning. If it is one lot, you go all the way down to Mearns and say are you set back. The answer would be "yes" because we are hundreds of feet away.

MR. DONNERY: That it is fine, it is just how you are encroaching on the other zone.

MS. TERHUNE: I need to check that out and we will clarify.

MR. HAGER: I think Alyse that you are going to find that the Code mentions that if you have total frontage like this, the Applicant can designate which street line he wants to be the front. In this case, it will be Route 9W. That is subject to a 50 foot setback. The other street frontage is probably also subject to the same setback because it is also the front line on another street.

MR. DOHERTY: Meaning Mearns?

MR. HAGER: Yes, Mearns. It is going to be your rear yard but it is still subject. It is a little strange because I think the Code is really written for a corner lot so it will say side yard instead of the front. But a through lot I think is treated the same. But even if you applied the 50 foot front yard setback for Mearns, not even the retaining walls are within that. I think that is what the Applicant is looking for clarification on, if that rear yard set back and the transitional yard set back are considered one or two variances.

MS. TERHUNE: Except that if you look at Section 247 F where you have a lot divided by a boundary and one is in the B-2 District, the rear yard setback shall be measured from the district boundary line.

MR. GAFFORD: How much is that? Is that the same 30?

MS. TERHUNE: That is how I would read it.

MR. GAFFORD: Right, so it seems like they are both 30.

MS. TERHUNE: That is the transition. The other is 30 as well. That would be B-2. Yes, they are both 30.

MR. GAFFORD: Maybe you would have to list them twice, but it is the same outcome.

MS. TERHUNE: It is two different provisions in the Code, and I think that is why we listed it twice in the first place.

MR. GAFFORD: I wasn't in charge then.

MR. DOHERTY: That would be an additional variance, is that correct?

MR. GAFFORD: There were four. We were thinking of eliminating one.

MS. TERHUNE: No. You have the original one.

MR. GAFFORD: You might note on my form there is a switch of numbers that should read on the abutting side street, if that is what this is – 33 and 27. In other words, I switched those numbers.

MS. TERHUNE: So this should be 27.

MR. GAFFORD: Well make it 29.

MR. HAGER: The variance required is 27 instead of 30.

MR. GAFFORD: Those two lines should be identical. It should be 31 and 29. I will explain the two feet, if I could. That is what I think is correct.

MR. HAGER: So the abutting side street, that category should be changed to transitional yard?

MR. GAFFORD: I believe so.

MS. TERHUNE: Well, then that makes sense, if you are changing that.

MR. DOHERY: That is what I have on my application listed as transitional yard. This is the updated one.

MS. TERHUNE: That does not match mine.

MR. DONNERY: Variance required is 29?

MR. GAFFORD: Right, the variance required is 29 in both cases.

MS. TERHUNE: That's Section 240-7G and the other one then, the rear yard would be Section 240-25.

MR. HAGER: They both should show required 30 proposed one and required variance 29.

MR. GAFFORD: Yes, please. Our diagram shows that it is 3 feet away.

MS. TERHUNE: But, it is not?

MR. GAFFORD: It is right now, but when we put bump outs to give the wall a little bit of relief, I am pretty sure, when the next diagram comes in, you won't have a perfect side, you will have a two foot bump out this wall will be two foot closer.

MS. TERHUNE: What about this?

MR. GAFFORD: This is not an overhang.

MS. TERHUNE: It isn't.

MR. GAFFORD: This is just a curb line. Like a planning bed.

MR. GETZ: So you are allowing for the architecture to fill up two more of those?

MR. GAFFORD: Yes, because what we are going to do is show an in and out of the wall rather than a perfectly flat wall.

MR. GETZ: So when we prepare a revised plan, we will be showing that?

MR. GAFFORD: Yes.

MS. TERHUNE: How quickly can you get that? I would like to send this out for a 239.

MR. GETZ: We could get it tomorrow.

MS. TERHUNE: I was thinking if they send me a PDF, perhaps I could E-mail it to the County. Hopefully, they will accept it. Then I could follow it up with a hard copy. At least we could get it out as quickly as possible.

MR. GETZ: You want me to say a 336 x 80, instead of 78?

MR. GAFFORD: Well, it will be two here and two there, so it will be 82. It would be helpful.

MR. GETZ: We have a bulk table on that plan, but I don't think we mention the transitional area. Do you want us to add that?

MS. TERHUNE: I don't think you need to do that. You should just call it out when you revise your application.

MR. GETZ: You will take care of that. We will change this where we currently show a three foot rear yard and make it a one foot.

MS. TERHUNE: Have you eliminated one of the walls?

MR. GAFFORD: We used to have "A", "B", "C" and "D". We didn't really eliminate a wall, but they call it part of "B" and "D".

MR. GETZ: There used to be one perpendicular at this end. This is now continuous.

MR. GAFFORD: This is "B" continuous.

MR. DOHERTY: Originally it had made that sweeping turn coming back out to Route 9W.

MS. TERHUNE: Right. Are any of these granted prior to remain?

MR. GETZ: I think #6 about the stockade fence.

MS. TERHUNE: Is that the only one?

MR. GAFFORD: #4 and #6 are still required.

MS. TERHUNE: So you still require that extension?

MR. GETZ: These walls are very close to the original location.

MR. DOHERTY: How does that work? Do they have to be reapproved?

MS. TERHUNE: I think the cleanest way to do it is to simply to amend this resolution, if you grant this. We will amend the resolution to incorporate these two that have already been approved and revised the others to reflect the amended plan.

MR. DOHERTY: Just to be straight, this goes away and the new plan will have the amendments on it which will include #4 and #6 and any other variances.

MS. TERHUNE: This will specifically be replaced so there will be no confusion in the record. You might just want to add a narrative; I think you have, to #4 and #6.

MR. GAFFORD: Yes, I mentioned that. Just as a point of form, the last time we went through this sequence, one of the things the Zoning Board was concerned about was, after the public hearing, having an approval that would trigger a 60-day calendar in which the Planning Board would have to approve within the same time.

MS. TERHUNE: SEQRA? In that situation, you submitted first to the Planning Board for the overall plan. At that point, the Planning Board became Lead Agency for Coordinated Review. Here, it is a bit different, basically you have an approved plan and you are revising it and you are coming to the ZBA for variances. That is a Type II Action. Even if it isn't, and I will have to check that out because this is still 105,000 square feet, correct? In any event, you are coming before this Board. This Board will make its SEQRA determination and then you will go to the Planning Board. I don't think it is necessary, in this instance, to coordinate SEQRA with the Planning Board.

MR. GAFFORD: I think that's all we have. We are going to sent you a revised application and drawing. Do you want us to rely on Mr. Hager to forward?

MS. TERHUNE: I think that generally works best, to go to Mr. Hager and then to come to the Board.

MR. DOHERTY: To be clear, they will send that PDF to John to go out to the County and John will forward it to you.

MR. GAFFORD: I will be here tomorrow.

MR. GETZ: Is it okay if I send it to simultaneously to both of you?

MS. TERHUNE: You can do that. I will copy the chairman on everything. You might want to revise the EAF, too. Let me see if I have any questions on it.

MR. GAFFORD: In what sense? Remember I was answering it in light of the additional lot.

MS. TERHUNE: Is that all? This is only to the additional lot?

MR. GAFFORD: Yes, because we had done all those things.

MS. TERHUNE: Still the application for the variances does, in fact, include this lot. I think it would be wise to redo the EAF and send it right along.

MR. GAFFORD: So we can take the previous one that we sent for the main lot and look to see if the secondary lot changed any conditions.

MS. TERHUNE: Yes, I would do that.

MR. GAFFORD: Is there anything that was glaring, IF I COULD ASK?

MS. TERHUNE: Well, I had some questions. I guess I did not really understand that this was for only the one lot.

MR. GAFFORD: Maybe then, I will just go back and get our formal one, resubmit it for the two and see if the second one changes anything.

MS. TERHUNE: I think that would be a better thing to do.

MR. GAFFORD: Thank you.

MS. TERHUNE: The only other question I had is the extension into the R-3 Zone is not necessary for that second lot?

MR. GAFFORD: It's not because it doesn't have an R-2 Zone.

MR. GETZ: Right. We previously showed the zone line to continue on a straight line but we since found out that the district boundary is the same as the property line. I confirmed with Mr. Hager that this entire will be zoned B-2.

MR. HAGER: That is the way the map is drawn. The entire lot is zoned B-2.

MS. TERHUNE: That makes it simple.

MR. GAFFORD: Yes, you had questioned us on that.

MR. HAGER: Showed the correction to property line on the map.

MR. GAFFORD: We have more B-2 than we thought.

MR. HAGER: Right.

MS. TERHUNE: I don't have any other questions.

MR. DOHERTY: Any questions from the Board?

MR. DEVEREAUX: Just curious, in the EAF you mentioned a maximum of rooms

MR. GAFFORD: I will clean that up. It is probably 133. 133 would be a more accurate number. What happens is you have it worked out and you make a sweep and you change it to something else and a room disappears. I think 133 is an accurate representation. We end up with over 210 parking spaces, which is great. Without the previous plans sitting here, these lanes are greatly widened so from a fire access point of view, the trucks will have a much easier time.

MR. DEVEREAUX: That would be a Planning Board matter.

A motion was made to set a Public Hearing for July 20, 2015, at 7:00 P. M., for this project.

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

MR. DOHERTY: All across the Board.

MR. GAFFORD: Thank you for your time.

MR. DOHERTY: Thank you Gentlemen. You will take care of things?

MR. GETZ: That's less than 30 days, what if the County does not reply?

MS. TERHUNE: Then we can't make a decision that night.

MR. DEVEREAUX: We can sit, but not make a decision, right?

MS. TERHUNE: Yes. We will send it off and see what happens and maybe follow up and see if they can speed it up a little, especially since they have already reviewed this once and given it a local determination.

MR. DONNERY: We are going to be voting on each one of the variance separately, right?

MS. TERHUNE: I know we used to do that.

MR. DOHERTY: Last time we voted them all.

MS. TERHUNE: We voted them all. Unless the Board really wants to go through each one specifically, I think the Board can do the all at one time. If there is one particular one that you are not going to grant, or you are going to grant with a condition, etc., then we will call those out. But, unless there is something specific about one of them that either you want to condition or not grant, then it is easier and just as clear frankly to do them all.

MR. DONNERY: I was just going to ask if you could word it a certain way so we knew what we were voting on for each one.

MR. DOHERTY: If I am not mistaken, the last time they were before us, we reviewed each variance and then we voted on them as a whole. We went through each one, discussed it, and voted on the application as a whole.

MR. DEVEREAUX: Makes sense.

MR. DOHERTY: I think everything definitely needs to be discussed in full but as opposed to chopping it all up.

MS. TERHUNE: We used to do resolutions that went on and on and you said the same thing about each one. That was my fault. We did not need to do that. I think streamlining it obviously, you do discuss every one. But in the written determination you might have something very specific about one and that should be reflected in the written decision.

MR. DOHERTY: Any caveats can be pointed out and written up.

MS. TERHUNE: Yes.

MR. DOHERTY: Any other discussions?

MR. DONNERY: No, that was it.

At 7:43 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Devereaux Seconded: Mr. Donnery Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is
Monday, July 20, 2015**